

negotiations" with the site owners. He knew that Raystay lacked a viable business plan, had no intention of proceeding without one, and was trying to sell the permits. Under those circumstances, it was obvious that his subordinates would not be negotiating leases Raystay did not need for sites it had no plans to build. Further, Gardner was fully aware of most of the undisclosed facts that made the applications fundamentally deceitful. Specifically, contrary to the plainly conveyed impression that Raystay *would* construct if the extensions were granted, Gardner knew that Raystay had no workable plan and no present intent to construct. From the negotiations with Trinity and Shaffner, he also knew that other parties in fact *were* interested in the permits. Still, he did nothing to change the words or the tenor of the applications. Instead, he personally endorsed the deception with his signature.^{65/}

Since Gardner participated in the deception, he is personally culpable. At the very least, he knew that the impression conveyed was materially misleading in light of facts not disclosed. The FCC is not to tolerate an applicant who conceals facts "flatly inconsistent with the clear import of [its] representation." Press Broadcasting Co., Inc. v. FCC, 59 F.3d 1365, 1371 (D.C. Cir. 1995).^{66/} Moreover, as one under "heightened scrutiny," Gardner's *reliability* is also at issue. He failed to ensure that his applications were truthful -- despite his pledge to do exactly that. For all of the foregoing reasons, he is unfit to be a licensee.

^{65/} The ALJ is demonstrably wrong in stating that the FCC staff was not deceived (ID ¶1343). In granting the second extension, the staff expressly based its decision on the "fact" that "Raystay has entered into negotiations" with the site owners. (TBF Ex. 252)

^{66/} Reversing the FCC, the Court found misrepresentation where a permittee had won an extension by stating that construction "has been delayed by a dispute with the tower owner which is the subject of legal action," without disclosing that the permittee itself had started the action and that the pendency thereof did not preclude construction.

V. ENLARGEMENT OF ISSUES AGAINST GLENDALE

Trinity excepts to the ALJ's failure to designate a financial certification issue against Glendale based on George Gardner's implicit and apparently untruthful representation that he had conducted an independent appraisal of the non-liquid assets upon which he relied for his loan commitment to Glendale. MO&O, FCC 93M-469, 7/15/93, ¶15.^{67/} (The Bureau urged that the issue be framed as a financial qualifications rather than a certification issue; MMB Comments, pp. 18-19.) An appraisal was a prerequisite to reasonable assurance, and Glendale's own submissions compel the conclusion that no such appraisal was obtained.

Trinity also excepts to the ALJ's failure to dismiss Glendale's application (or designate an appropriate issue) for lack of an available transmitter site. MO&O, ¶12-7. Glendale lost reasonable assurance when the site owner's offer expired. The ALJ erred in finding that Glendale had accepted the offer through an agent, since the agent did not sign the purported acceptance for Glendale and the owner never received it.

VI. CONCLUSION

For the foregoing reasons, the ID should be reversed and TBF's application granted.

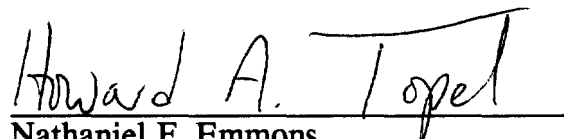
Respectfully submitted,

Mullin, Rhyne, Emmons and
Topel, P.C.
1225 Connecticut Ave.- #300
Washington, D.C. 20036-2604
(202) 659-4700

January 23, 1996

TRINITY BROADCASTING OF FLORIDA, INC. and
TRINITY BROADCASTING NETWORK

By:


Nathaniel F. Emmons
Howard A. Topel

^{67/} The pleadings below pertaining to both issues discussed here are: TBF's Motion To Dismiss filed May 13, 1993; Glendale's Opposition filed June 7, 1993; Mass Media Bureau's Comments filed June 7, 1993 ("MMB Comments"); and TBF's Reply filed June 17, 1993.

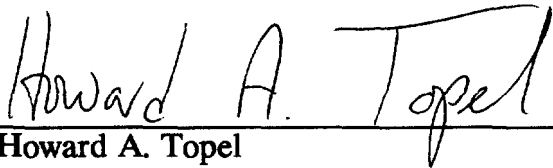
CERTIFICATE OF SERVICE

I, Howard A. Topel of the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 23rd day of January, 1996, copies of the accompanying "Exceptions to Initial Decision" were sent by first class mail, postage prepaid, to the following:

- * The Honorable Joseph A. Marino
Chairman, The Review Board
Federal Communications Commission
2000 L Street, N.W., Room 211
Washington, D.C. 20554
- * The Honorable Marjorie R. Greene
Member, The Review Board
Federal Communications Commission
2000 L Street, N.W., Room 206
Washington, D.C. 20554
- * Allan Sacks, Esq.
Chief for Law, The Review Board
Federal Communications Commission
2000 L Street, N.W., Room 205
Washington, D.C. 20554
- * James Shook, Esq.
Gary Schonman, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W. -- Room 7212
Washington, D.C. 20554
- * Gene A. Bechtel, Esq.
John J. Schauble, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W. -- Suite 250
Washington, D.C. 20036

* Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper,
Leader & Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006-1851

David E. Honig, Esq.
3636 16th Street, N.W. #B-366
Washington, D.C. 20010


Howard A. Topel

* Hand Delivered